

REMARKS

In order to expedite prosecution, Applicants' representative initiated a telephone interview with Examiner Rimell. Applicants and Applicants' representative would like to thank Examiner Rimell for his courtesy in conducting the interview and for his assistance in resolving issues. A summary of the interview discussion follows.

Claims 1-8, 11, 14 and 15 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Machida. This rejection is respectfully traversed for the following reasons.

During the interview, the Examiner indicated that the replacement disks of Machida were being read as updated disk devices. In order to clarify the distinction between Machida and the present invention, each of the independent claims have been amended to embody the firmware of the updated disk device as being updated from the firmware stored therein prior to the update. In contrast, the alleged updated disk devices of Machida (i.e., replacement disks) do not store firmware prior to the update used to determine the updating firmware. Instead, firmware of the replaced disk is compared with a reference disk device to determine whether the updated disk device takes the firmware of the replaced disk or the reference disk (*see* col. 10, lines 1-20).

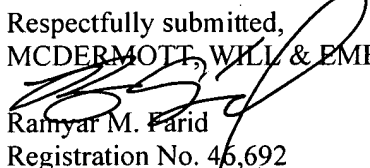
As anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be disclosed, either expressly or inherently (noting that "inherency may not be established by probabilities or possibilities", *Scaltech Inc. v. Retec/Tetra*, 178 F.3d 1378 (Fed. Cir. 1999)), in a single prior art reference, *Akzo N.V. v. U.S. Int'l Trade Commission*, 808 F.2d 1471 (Fed. Cir. 1986), based on the forgoing, it is submitted that Machida does not anticipate the independent claims, nor any claim dependent thereon.

Under Federal Circuit guidelines, a dependent claim is nonobvious if the independent claim upon which it depends is allowable because all the limitations of the independent claim are contained in the dependent claims, *Hartness International Inc. v. Simplimatic Engineering Co.*, 819 F.2d at 1100, 1108 (Fed. Cir. 1987). Accordingly, as the independent claims are patentable for the reasons set forth above, it is respectfully submitted that all claims dependent thereon are also patentable. In addition, it is respectfully submitted that the dependent claims are patentable based on their own merits by adding novel and non-obvious features to the combination.

Based on the foregoing, it is respectfully submitted that all pending claims are patentable over the cited prior art. Accordingly, it is respectfully requested that the rejection under 35 U.S.C. § 102 be withdrawn.

CONCLUSION

Having fully responded to all matters raised in the Office Action, Applicant submits that all claims are in condition for allowance, an indication for which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicant's attorney at the telephone number shown below. To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,
MCDERMOTT, WILL & EMERY

Ramyar M. Farid
Registration No. 46,692

600 13th Street, N.W.
Washington, DC 20005-3096
(202) 756-8000 RMF:MaM
Facsimile: (202) 756-8087
Date: October 3, 2006